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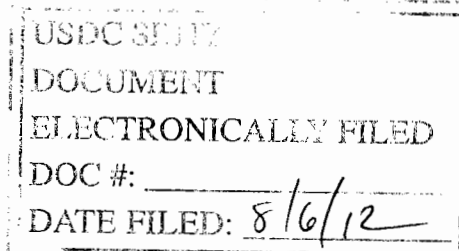
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August 6, 2012



BY EMAIL

Hon. Denise L. Cote
United States District Judge
500 Pearl Street, Room 1610
New York, New York 10007-1312

MEMO ENDORSED

RE: FHFA v. UBS Americas Inc., et al., 11-cv-5201 (DLC)

Dear Judge Cote:

On behalf of Defendants in the above-referenced action, we write concerning Plaintiff's refusal to produce promptly relevant loan files in its possession, custody or control.

Defendants first requested the production of loan files from Plaintiff on May 22, 2012 – more than two months ago. (See Declaration of Jay B. Kasner ¶ 3.) Approximately one month later, Plaintiff informed Defendants for the first time during a meet and confer that it was under an obligation to notify certain third parties from whom it obtained the loan files prior to producing them, and that Plaintiff had not yet served a single notification. (*Id.* ¶ 4.) It was not until July 12, 2012 – seven weeks after Defendants' request – that FHFA informed Defendants that it had "completed the notification process as to the parties from whom it obtained those files" (*Id.*)

During the July 31 conference, after Defendants confirmed that they had produced to Plaintiff all loan files in their possession, custody or control,¹ Defendants requested that the Court order Plaintiff "once and for all to produce all of the UBS loan files it has in its custody, possession or control. So at least we know what we have to get from third part[ies]." (*Id.* ¶ 7.) In response, Plaintiff's counsel represented to the Court that Plaintiff would produce these remaining loan files "this

¹ Defendants completed this production in response to Plaintiff's request for loan files dated June 20, 2012, which was served nearly one month after Defendants requested the loan files from Plaintiff.

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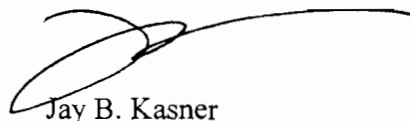
week" – *i.e.*, by August 3, 2012. (*Id.* ¶ 8 ("[T]here is a remainder [of loan files] left and we could produce those this week. That's not a problem".))

Having not received any further productions by August 2, 2012, Defendants sent a letter to Plaintiff reminding it of its representation that it would produce all remaining loan files by the close of business on August 3, 2012. (*Id.* ¶ 9.) At 8:41 p.m. on August 3, counsel for Plaintiff responded by letter that it would not commit to producing these loan files until August 29 – nearly a month later than the date represented to the Court and over three months after Defendants first requested them. (*Id.* ¶ 10.)

Counsel's purported excuse for failing to comply with its representation to the Court is that it "perceived, perhaps mistakenly," that Defendants were seeking production of only those loan files associated with Plaintiff's forensic review. (*Id.*) However, the transcript from the July 31 conference makes clear that Defendants were requesting "all of the UBS loan files [FHFA] has in its custody, possession or control," as further confirmed by the Court's subsequent question to Plaintiff: "[D]o you want to address the status of the disclosure of loan files in FHFA's possession?" (*Id.* ¶ 7.) Additionally, counsel could not be referring to loans examined as part of its forensic review when it represented that "there is a remainder [of loan files] left and we could produce those this week" because FHFA now states that prior to the conference it had already produced all of the loan files relating to its forensic review that were in its possession, custody or control. (*Id.* ¶ 10.)

In light of Plaintiff's repeated failures to produce all relevant loan files in this action, along with its inability to offer a cogent and credible explanation for such failures, Defendants respectfully request that the Court order Plaintiff to produce no later than August 8, 2012 all remaining UBS loan files in its possession, custody or control.

Respectfully submitted,



Jay B. Kasner

Enclosures
cc: All counsel (by email)

*Counsel shall meet and confer regarding
the FHFA's schedule for production of the
500 or so loan files and advise the Court
by August 7 if any unresolved dispute
remains.*
Denise Cote
August 6, 2012